

LRH /s/

12 October 1970

MEMORANDUM FOR: Executive Director-Comptroller

SUBJECT: ACDA

1. On Friday, 9 October 1970, you requested any thoughts we might have regarding ACDA's request for funds from the Agency to support the SALT talks. I think we can be somewhat firmer from a legal standpoint than I indicated to you on Friday.

2. It appears the request directly relates to the SALT talks. Our only responsibility in this policy activity is intelligence support. Consequently, a contribution of funds could be construed as an improper supplementation of their appropriation. I am sure that our Subcommittee Chairmen would not be happy with such a transfer.

/s/

JOHN S. WARNER
Deputy General Counsel

Orig - Hand carried to Ex Dir

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STATINTL

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OSD has no objection to declassification and release.

OSD review(s) completed.

OGC Has Reviewed

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Attached prepared for LDCI for PFIAB Meeting
on 9 October 1970.

OGC Subject - APPROPRIATIONS

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FULBRIGHT AMENDMENT

Section 502 of the Defense Authorization bill, H. R. 17123, which has recently passed both Houses of Congress provides that:

"(a) (1) Not to exceed \$2,800,000,000 of the funds authorized for appropriation for the use of the Armed Forces of the United States under this or any other Act are authorized to be made available for their stated purposes to support: (A) Vietnamese and other free world forces in support of Vietnamese forces, (B) local forces in Laos and Thailand; and for related costs, during the fiscal year 1971 on such terms and conditions as the Secretary of Defense may determine...."

This is similar to previous language but clarifies the authority to support Vietnamese forces in sanctuary areas. However the following new language, known as the Fulbright amendment, was added in the Senate and accepted in Conference with the House:

"Nothing in clause (A) of the first sentence of this paragraph shall be construed as authorizing the use of any such funds to support Vietnamese or other free world forces in actions designed to provide military support and assistance to the Government of Cambodia or Laos."

In discussion on the floor of the Senate it was made clear that this language was not intended to interfere with such operations as our support of the Meo guerrillas in Laos or operations in the sanctuaries supporting U.S. and South Vietnamese forces in South Vietnam:

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Senator Fulbright: "The amendment would carry out the intent of the Armed Services Committee by prohibiting the use of Department of Defense funds to finance Vietnamese or Thai military operations in support of the Cambodian Government. In addition, it would go one step further and prohibit use of Defense Department funds for military actions by these countries in support of the Laotian Government. ... What I am trying to avoid is becoming really involved in a close-scale operation in support of the Government of Cambodia and the Government of Laos.... The amendment will not bother what we give to the Laotians... It will not disturb what has been the past practice in Laos... I do not expect the amendment to affect what has been going on in Laos --that is the bombing of the trail, our assistance to Laos, or what our people are doing there-- because it does not affect that. It is to keep the Vietnamese or the Thais from dragging us into another war. In a word that is the purpose of the amendment."

Senator Stennis: "So the Senator from Arkansas is saying that anything we have going on in Laos now is not to be affected in any way by the amendment he offers?"

Senator Fulbright: "Not that I know of."

Senator Stennis: "I have told the Senator from Arkansas everything that is on my mind. I want to make it clear that I am a 'sanctuary man,' and the Senator from Arkansas agrees to that."

Senator Fulbright: "I accept that. I am not trying to roll back anything. I am trying to prevent any advance."

It was also made clear in the floor debate that the words of the Fulbright amendment simply made explicit what the Armed Services Committee Report stated was the intent of the free world forces language. Senator Stennis agreed with Fulbright that the Fulbright amendment was merely a statutory expression of the intent of the Armed Services Committee.

So far as the Agency is concerned, it has been clear for some time that key congressional leaders familiar with our activities were generally opposed to our financing Thai troops for service in Laos and Cambodia. As long ago as last July both Chairman Russell on the Senate side and Chairman Mahon on the House side expressed the view that this sort of thing put too much burden on the Agency budget and was too difficult to

keep secret.

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Since the passage of the Fulbright amendment there have been extensive technical discussions on its precise legal interpretation. Perhaps it can be argued that under some of the special authorities contained in the CIA Act of 1949 we could get by with things which the Fulbright amendment would prevent the Defense Department from doing. Regardless of the fine legal points, however, the intent of Congress as expressed in the above quoted dialogue on the floor and in the Conference report seems clear: neither the Defense Department nor any other Government agency can support outside forces in operations intended to provide military assistance for the governments of Cambodia or Laos.

We had understood that the language of the Fulbright amendment might be modified in Conference between the House and Senate, and we were told by Senator Russell that such modification would be necessary if Agency operations in Southeast Asia were not to be affected. Accordingly our people met with representatives of the Defense Department and discussed the matter with appropriate staff officers of the House Armed Services Committee. Although proposals for modifying the amendment were discussed in these meetings the Defense Department's formal comments on various provisions of the bill did not touch upon the Fulbright amendment. We later learned that the Defense Department not only failed to raise the issue of the Fulbright amendment in its formal

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comments on the bill, but explained that the Administration could "live with" the Fulbright amendment without difficulty. The amendment was thereupon accepted in Conference and has since passed both House and Senate. Thus, in effect, the Agency is under a mandate not to use its legal authorities in a manner inconsistent with the Fulbright amendment.

On 29 September the Director received a call from Chairman Stennis who explained that he supported the Fulbright amendment and that he was opposed to the Agency's involvement in any activities which were not really authorized by the bill. He said he felt we had an obligation to keep our legislative overseers fully informed of any operations in which we were engaged. He added that the Agency should not be used to circumvent any prohibitions imposed on the Defense Department by the Congress.

On 2 October the Director and Deputy Secretary of Defense Packard met with Senator Stennis and reviewed the problem in more detail. In the course of this meeting the Chairman expressed the following personal views:

- a. Any operations in "direct support" of U.S. operations are not precluded by the Fulbright amendment. For example we would be free to support Vietnamese or other free world

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forces in operations to clean out the sanctuary area in Cambodia, but not in operations designed to support and sustain the Cambodian government.

b. The Fulbright amendment was not intended to prohibit operations in the Laotian Panhandle designed to interdict Communist supply lines supporting the Communist effort in South Vietnam.

c. The effective date of the Fulbright amendment is the moment of the President's signature on the authorization bill.

In conclusion it was agreed that the Director would examine the problem on the spot during his upcoming visit to Southeast Asia and discuss it further with the Chairman upon his return.

In view of all this, there is not much doubt about the congressional intent behind the Fulbright amendment. To ignore this intent would undoubtedly produce a sharp reaction from the Hill. Indeed it might very well result in legislation revoking the Director's special privileges and authorities which are essential to carrying out the various missions assigned the Agency by the NSC. It might result in far deeper and wider scrutiny of Agency funding with the inevitable security leaks which would follow.

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On the other hand if we observe the letter and spirit of the Fulbright amendment in accord with the mandate of Senator Stennis the policymakers in the Executive Branch will be required to realign several important planned and going operations.

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